IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23012 of 2005
With
SPECIAL CIVIL APPLICATION No. 23013 of 2005
To
SPECIAL CIVIL APPLICATION No. 23021 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUDHARY MANOJ B - Petitioner(s)

Versus

SAURASHTRA UNIVERSITY & 1 - Respondent(s)

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Appearance :
MR NIRAV C THAKKAR for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 29/11/2005

COMMON **ORAL JUDGMENT**

1. In these petitions, the respective petitioners who were prosecuting their studies in respondent No.2 – Engineering College at Morvi have prayed for an appropriate writ, direction or order quashing and setting aside the communication dated 5/8-11-2005 by

the respondent No.2 thereby directing the respondents not to detain them from appearing in the ensuing examination commencing from 5.12.2005 and further directing the respondents to grant term of the respective petitioners for the current semester.

2. It is the case of the petitioners that they were studying in different semesters and courses in the respondent No.2 – Engineering College at Morvi. By communication dated 5/8-11-2005 all of them are informed by the Principal of the said College that they are finally detained from appearing in the examination of November / December, 2005 on account of low attendance in theory and practical and non submission of term work of the various subjects. It is the contention of the petitioners that as such, all the students studying in the respondent No.2 – engineering college were having low attendance still except the petitioners, so far as the other students are concerned, by imposing some fine and penalty, their term has been granted and they are permitted to appear in the ensuing examination. However, so far as

the petitioners are concerned who are ten in numbers, the impugned order has been passed and they are detained from appearing in the examination. Therefore, the action of the respondents is discriminatory and violative of the Article 14 of the Constitution of India. Shri N.C.Thakkar, the learned advocate appearing on behalf of the respective petitioners in support of his above submission has relied upon the Receipts dated 29.10.2005 which are at Annexure-C collectively. Shri Thakkar, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the respondent No.2 ought to have given similar treatment which is given to the other students who were also having low attendance and ought to have condoned low attendance and ought to have granted term of the petitioners. In the alternative, Shri Thakkar, learned advocate appearing on behalf of the respective petitioners has submitted that the respondent No.2 be directed to take extra lectures in the next semester so that all of them can appear in the next semester, otherwise, they will have to wait

for one year and they will be permitted to appear in the examination only next year. No other submissions have been made.

3. From communication / order dated 5/8-11-2005, it appears that the respective petitioners are / were prosecuting their studies in different semesters in different course, however, in engineering. It is admitted position that all the petitioners are having low attendance in theory and practical. The aforesaid factum of low attendance is admitted by the petitioners. It is also an admitted position that the respective petitioners have not submitted the term work of different subjects. No particulars have been given by the respective petitioners upto what extent there is low attendance and what is requirement of the attenance and whether there are powers to condone the attendance and if there are powers to condone attendance, to what extant and for how many days, low attendance can be condoned. As such, no particulars are given with regard to the other students of whom according to the petitioners low attendance is

condoned. Even on going through the receipts which are relied upon by the petitioners at Annexure-C collectively, it doe not born out from the same whether the same is towards fine for condonation of low attendance or not. It is the contention on behalf of the petitioners that as the petitioners were prosecuting their study while staying in hostel and since they are coming from outside Morvi, they could not attend the college and due to the same there is low attendance. It is required to be noted that in the most of the colleges now-a-days the students are prosecuting their study from outside place and / or town from the place where the college is situated and the students are prosecuting their study while staying in hostels and therefore, the same cannot be a ground for not attending the college and having low attendance. There is no justifieciation for low attendance. There is no justification for non submission of term work also. Assuming that some other students' term might have been granted by condoning low attendance, however, in absence of any particulars with regard to the extent of low

attendance and percentage of low attendance, cases of the petitioners cannot be compared with those students. Even otherwise, assuming that some students whose attendance has been condoned even dehors the Rules, in that case also, considering the law laid down by the Hon'ble Supreme Court in case of CHANDIGARH ADMINISTRATION AND ANOTHER V. JAGJIT SINGH AND ANOTHER reported in AIR 1995 SC 705 and in another decision in case of UNION OF INDIA AND ANOTHER V. INTERNATIONAL TRADING CO AND ANOTHER reported in 2003 (5) SCC 437 as well as in case of YOGESTH KUMAR AND OTHERS V. GOVT. OF NCT, DELHI AND OTHERS reported in 2003 (3) SCC 548 the order passed in favour of one person if it is found that it is wrong order then also, another person cannot claim parity and that wrong order in favour of one person cannot entitle the other person to get the same order. At this stage, Shri Thakkar, learned advocate appearing on behalf of the petitioners has submitted that when the respondent No.2 has condoned low attendance and granted term by imposing fine, it is to be presumed that the same is not a wrong order.

Such a submission cannot be accepted for the simple reason that as stated hereinabove,it is not possible to compare the cases of the petitioners with that of those students whose terms are alleged to have been granted on condoning the low attendance in absence of any specific particulars. In absence of showing any rules for such condonation, merely because some action is taken by the institution, it cannot be said that the said order is a right order. In the present case, it is an admitted position that there are low attendance in theory and practical so far as all the students are concerned and they have not even submitted the term work of the subjects shown in the communication dated 5/8-11-2005. To attend the college and attendance in theory and practical by the students is for the purpose of prosecuting study and unless they attend theory and practical, they cannot have sufficient knowledge of particular subject. Attending theory and practical and submitting term work is part of their studies. They are future Engineers and after prosecuting their studies and become Engineers, they are likely to construct

houses, bridges etc. If without any study they are permitted to appear in the examination one can imagine the quality of those engineers in the society. It is ulimately for the education institution and the authority to take an appropriate decision in the academic matter and to have better standard of education. Normally, the Court should not interfere with the academic standard and / or action of the institute unless it is found to be malafide. In the present Special Civil Application, there are no allegations of malafide. On the contrary, it is an admitted position that there are low attendance in theory and practical and they have not submitted the term work of the subjects. To maintain education standard and the discipline, the prayer of the petitioners to allow them to appear in the ensuing examination and directing the respondents to grant their term irrespective of low attendance in theory and practical and non submission of term work of subjects in question, cannot be granted.

4. So far as alternative prayer made by the learned

advocate appearing on behalf of the petitioners to allow them to make representation to the respondents to have extra classes in the next semester for the subjects in question and thereafter to allow them to appear in the next examination is concerned, it is submitted by Shri Thakkar, learned advocate for the petitioners that the aforesaid prayer is made as the institute is imparting education and the subjects in odd semester and therefore so far as the subjects in question are concerned, there will not be any lectures in the next semester by the concerned institute and only for the petitioners the respondent No.2 will have to conduct the lectures for the aforesaid subjects. Therefore, considering the above, it is not possible to even direct the respondents to consider such representation.

5. Under the circumstances, the present Special Civil Applications are required to be dismissed as the petitioners are not entitled to any relief as prayed for.

6. For the reasons stated above, there is no substance in the present Special Civil Applications and the same are required to be dismissed and are accordingly dismissed at the threshold.

[M.R.Shah, J.]

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